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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 ERIC GLATT
4 on behalf of himself and all others
5 similarly situated, et al.,

6 Plaintiffs,

7 v.

11 CV 6784 (WHP) (AJP)

8 FOX SEARCHLIGHT PICTURES INC.,
9 et al.,

10 Defendants.

11 New York, N.Y.
12 November 21, 2012
13 9:30 a.m.

14 Before:

15 HON. ANDREW J. PECK

16 Magistrate Judge

17 APPEARANCES

18 OUTTEN & GOLDEN LLP
19 Attorneys for Plaintiffs
20 BY: ELIZABETH WAGONER, ESQ.
21 ADAM T. KLEIN, ESQ.

22 PROSKAUER ROSE LLP
23 Attorneys for Defendants
24 BY: ELISE M. BLOOM, ESQ.
25 AMY F. MELICAN, ESQ.

Also Present: NICHOLAS BUNIN
Vice President
Legal Operations & Technology
Fox Entertainment Group, Inc.

1 (In open court)

2 THE CLERK: All right. We have a lot to do today, and
3 as the New Yorkers know it's the Federal Bar Council
4 Thanksgiving lunch, or as now I think it should be called
5 brunch because it starts so early, so hopefully we can make a
6 lot of progress quickly.

7 You should know that Judge Pauley just faxed down to
8 me the order he issued that you'll all find on your ECF
9 notifications denying the reconsideration motion and stating
10 that Antalik's FLSA claims did not relate back. So that will
11 perhaps alleviate some of the discovery issues that you all
12 have raised.

13 As to the timing of ESI production, obviously it's not
14 going to be produced by November 21 since you're here today, so
15 whatever I rule can't be done instantly by you. And I guess my
16 question is this: Have you finally worked out the final set of
17 keywords or not?

18 MS. BLOOM: Your Honor, Elise Bloom on behalf of the
19 defendants. I believe that we have worked them out. We worked
20 out the last custodian in Hoffman. I just learned this morning
21 that there are about 22,000 hits, though. But I think a lot of
22 them are images. So our best estimate is that we'll be able to
23 produce the ESI by a week from Friday.

24 THE COURT: Does that work for the plaintiff?

25 MS. WAGONER: By a week from Friday, on November 30th?

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1 Is that the date?

2 MS. BLOOM: Correct.

3 MS. WAGONER: As long as it's all produced by November
4 30th we can work within that time frame, your Honor.

5 THE COURT: OK. Good. That takes care of the first
6 item on your letter. I'm just going through your letter.

7 As to the complete list of all subsidiaries using
8 interns, etc., it seems to me you've got to figure out what
9 your universe is here. And you keep having the same issue
10 repeating itself. In any event -- and this may or may not help
11 you at all -- it would seem to me that the only subsidiaries
12 that would matter at this point would be those in New York or
13 California. Is that correct or incorrect? In other words,
14 it's really the state law claims where you have the possibility
15 of a class action.

16 MS. WAGONER: Well, we also have collective claims
17 under the Fair Labor Standards Act, your Honor.

18 THE COURT: The time to opt in has passed, hasn't it?

19 MS. WAGONER: No, it hasn't. There is still a window
20 of time for people to opt in.

21 THE COURT: So when --

22 MS. WAGONER: Well, the opt-in phase hasn't started
23 yet, your Honor. We haven't moved for collective certification
24 yet.

25 THE COURT: Well, you know, maybe the answer is we

1 stay discovery until you do. It seems to me you can't have it
2 both ways. "We may have plaintiffs who may have these claims"
3 doesn't make any sense.

4 MS. WAGONER: Your Honor, in any event I'm not sure
5 that it matters because I don't believe there are subsidiaries
6 in other states, although Ms. Bloom could correct me about
7 that.

8 THE COURT: All right. That may moot the issue. But
9 let's -- well, let me get the answer to that, but then let's
10 step back. It's one thing with the class allegations. It's
11 another to say there may be opt-ins and then we're going to
12 have to do discovery all over again. This makes no sense.

13 MS. BLOOM: Your Honor, there are subsidiaries in
14 other states, but there is no California state law claim that's
15 at play with this discovery. The discovery goes to FEG and FEG
16 is only as to the FLSA, not as to the state law claim.

17 THE COURT: OK. So if we limit it to FEG New York
18 subsidiaries, does that help at all in this fight or not?

19 MS. BLOOM: That helps a lot, because that would limit
20 it to -- the problem -- here's what our central problem is in
21 terms of trying to move this forward. Other than this group of
22 companies that for a period of time Amy Hoffman was overseeing,
23 and putting aside the disagreement about what her role was or
24 was not, as to any of the other 500 subsidiaries, they were
25 individually run, so in order for me to know who had interns

1 and who did not, I would literally have to go to someone in
2 each of those companies and ask that question.

3 THE COURT: Are there literally 500 Fox subsidiaries
4 in New York or FEG subsidiaries?

5 MS. BLOOM: Oh, in New York? I don't know the answer
6 to that. I don't want to misspeak. I don't know the answer to
7 that question.

8 THE COURT: All right. So with that as a thought,
9 we'll worry about it, but seriously, are we going to be doing
10 this twice, Ms. Wagoner, if not three times? I understand
11 that, you know, class certification, the standard is such that
12 at times it makes sense to do the class motion once discovery
13 is done. A collective action, which is a pretty low threshold,
14 I cannot believe that we're going to complete all this
15 discovery, move for, you know, summary judgment, and this and
16 that, and then depending on which way that all flies, that you
17 then may move for collective action certification, and then,
18 you know, if ten people opt in or a hundred opt in or whatever
19 it is, everyone is going to say, now we need discovery as to
20 these people because they are real individual plaintiffs.

21 MS. WAGONER: Your Honor, let me clarify a point in
22 the discovery schedule, because the way we've got it set right
23 now it closes on December 14, and then in January we are moving
24 all at once for summary judgment as to the two production
25 interns and for class and collective certification. That's all

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1 happening at once. And the way our discovery schedule has been
2 set, we're not -- the only discovery that happens after those
3 motions are ruled on is damages discovery. Once we have the
4 policy discovery during this phase right now before December
5 14, we don't see why there would be any need for discovery as
6 to, if it's only ten opt-ins, those ten opt-ins.

7 THE COURT: Or a thousand opt-ins, whatever it maybe.

8 MS. WAGONER: That is already contemplated in the
9 discovery schedule. Right now we're not seeking any individual
10 discovery about these interns. We're just thinking
11 policy-level discovery that's necessary and we're requesting
12 class certification all at the same time. So I don't think
13 that there's a risk that there would be a sort of broad
14 discovery after all of that, because it will be done now.

15 THE COURT: Well, but, if nothing else, since you're
16 talking about subsidiaries here that are not defendants,
17 they're going to have to be sued. I mean, it may well be, you
18 know, that the same lawyers from Proskauer and Mr. Bunin are
19 going to be here, but as a technical matter, indeed a due
20 process matters, if you're saying that, you know, Fox New York
21 Incorporated, if there is such an entity or, you know, Channel
22 5 WNEW New York, a Fox subsidiary, had unpaid interns, how are
23 you going to do anything about that without the corporate
24 entity being a defendant?

25 MS. WAGONER: Your Honor, our position is that Fox

1 Entertainment Group is the employer of these interns, and to
2 the extent there is another joint employer, that that is not
3 relevant to whether Fox Entertainment Group is their employer.
4 And we will not need discovery into those various wholly owned
5 subsidiaries because our position is that it's Fox
6 Entertainment Group. So, no, I don't anticipate that your
7 Honor at all.

8 THE COURT: As I understood it, Fox Entertainment
9 Group is not an operating entity at all. It's an umbrella
10 name.

11 MS. BLOOM: Again, it is an umbrella name.

12 MR. BUNIN: It is a term of art, for lack of a better
13 term, your Honor, that is used a lot of times by people, and I
14 have to admit myself included, when needing some kind of
15 catchall way to refer to different parts of the company, but it
16 is not to my knowledge an actual entity.

17 MS. BLOOM: And that is why we have suggested -- we
18 have already had discovery for a year. They have done all the
19 discovery on Searchlight. They have done discovery on the
20 production as well as the Searchlight interns. I mean for the
21 30(b)(6) if they want me to produce someone who's going to talk
22 about the fact that it's completely decentralized, I can do
23 that. And that's why we've sort of suggested Amy Hoffman for
24 this. We were trying to come up with something that made sense
25 that was doable.

1 MS. WAGONER: Your Honor, I frankly am hearing for
2 the -- if it's not a functioning entity, that's news to me.

3 THE COURT: We discussed this at the last conference,
4 unless my memory is totally wrong, which it could be, but I
5 have my doubts.

6 MS. BLOOM: It's a legal entity, and it's the same
7 thing that we told Judge Pauley when the issue came up about
8 FEG, that suing FEG as the defendant is not going to do
9 anything really to streamline the case or to move the interns'
10 claims forward.

11 MS. WAGONER: Your Honor, I think this illustrates a
12 problem here. We're trying to get discovery about FEG and what
13 its role was. It was our understanding from the very limited
14 discovery that we were able to obtain during the Searchlight
15 phase of the case is that it is the employer and it is the one
16 that sets the policies for these various subsidiaries. Now, if
17 that's not right, then I think discovery would bear that out.
18 But we haven't had an opportunity to subpoena that discovery
19 yet.

20 MS. BLOOM: They have a declar -- they have two
21 declarations which I thought clarified that, one from Veronica
22 Arroyo, one from Amy Hoffman, but if what would move this
23 forward would be for the 30(b)(6) to be on the central versus
24 decentralized issue, as long as there's no expectation that I'm
25 going to produce somebody who is going to be able to say this

1 subsidiary had interns, this subsidiary didn't, if that moves
2 it forward, I can do that. I'm talking about the declaration
3 of Amy Hoffman, which is dated September 19, 2012, and the
4 declaration of Veronica Arroyo, which is dated September 19,
5 2012. And I'm happy to give the Court a copy of them.

6 THE COURT: I vaguely remember them.

7 MS. WAGONER: Your Honor, I feel like -- we have asked
8 for very specific pieces of information in our discovery
9 requests.

10 THE COURT: Right. Which they have to go to 500
11 different companies to get. It is inconsistent with the claim
12 that you made to Judge Pauley and me that in the remaining
13 discovery period, which is fast waning, that you need only,
14 quote/unquote, limited discovery. To go to all these different
15 companies and figure out what they did with interns, even if I
16 limit it to the New York subsidiaries, and unknown number, it
17 seems to me -- you know, it took you a year to do Fox
18 Searchlight -- we can't do it in a month.

19 MS. WAGONER: Well, your Honor, that's why we asked
20 for interrogatory responses about the larger group, to find out
21 which subsidiaries actually had interns. Maybe only 30 of them
22 did.

23 THE COURT: But to find that out, they have to go to
24 500. That's the circular logic here. So in general I am going
25 to limit this at this time, subject to a 30(b)(6) deposition

1 that gives you some other reason to say that there is a
2 centralized decision to the companies serviced, if that's the
3 right word, by Ms. Hoffman.

4 I believe that takes care of II in the letter. Does
5 anyone has anything else to add before we move on to III?

6 MS. BLOOM: We're talking about the FEG companies,
7 right?

8 THE COURT: Yes. Which you have said, I believe, are
9 seven, right?

10 MS. BLOOM: Actually, there are nine of them. And
11 they have a list.

12 THE COURT: OK. Good. Anything else on no. II from
13 the plaintiffs?

14 MS. WAGONER: No, your Honor.

15 THE COURT: Ms. Wagoner? OK. No. III, PeopleSoft, is
16 this a difference between "and" and "or" that we're fighting
17 about?

18 MS. WAGONER: Yes, your Honor.

19 THE COURT: Had you been clear the first time, this
20 might not be an issue. I assume whatever it took, and without
21 regard to relevance -- and we've been through this before --
22 but whatever it took to program it to do the "and" version of
23 group K and job title credit, you can do an "or" version, I
24 assume and just run the list again.

25 MS. BLOOM: I'm going to let Mr. Bunin explain that,

1 because it wasn't quite as simple as either of us thought the
2 last time we were here. The list that they have has
3 800-and-some names on it, but I'll let him address the other.

4 MR. BUNIN: Yes, your Honor. The short answer of
5 course is that it certainly can be done. I don't know what
6 the -- want to be clear in terms of the running of the report
7 and hope I was not too flip the last time. I said we could run
8 it just like that, not anticipating that the person who had
9 originally run the report and knew the criteria that they had
10 used was in Singapore until November 14th. That being said, I
11 believe now we have everything teed up. Just for your
12 information, in terms of using your -- as we say, you're not
13 talking as to relevance -- the K group in question, K, that
14 seems to be at issue, just to be noted that it is not specific
15 only to interns, so an "or" will of course produce a lot of
16 information including, I've been informed, K group includes
17 Canadians. I'm not exactly sure what the thinking was behind
18 that when they coded their work, but they will not be interns;
19 they just will happen to be Fox employees from Canada.

20 MS. WAGONER: Your Honor, obviously we don't want
21 that. But I think in that case --

22 THE COURT: Stop, stop. If this list is 800 names and
23 we're not dealing with damages and 800 is certainly more than
24 the 40-plus required for class certification -- and I told you
25 last time, you don't get any follow-up to this report -- do you

1 really need to run it as an "or," particularly when, by adding
2 the "or," you are going to clearly get Canadians, who for tax
3 reasons or otherwise were included in code K.

4 MS. WAGONER: Your Honor, there are 800 names on it.
5 Not all of those are New York interns, which is the class.

6 THE COURT: Are there more employees?

7 MS. WAGONER: We don't have an Excel version of the
8 spreadsheet, which is also something that we need, so I haven't
9 had a chance to filter it to find out. So I'm not sure that
10 there are, your Honor, which is why I think that it would be
11 very helpful to us. If not the K category, then the intern
12 category that is not -- wherever K is not listed. So just that
13 category, where there's nothing else, would be helpful.

14 THE COURT: All right. So what you're saying is you
15 have the current list, you now want a new list that is only
16 those under the job title credit report?

17 MS. WAGONER: Yes, your Honor.

18 THE COURT: OK. Then that's what you'll get. And
19 Mr. Bunin was shaking his head in a sort of "yes." And you
20 don't have to run it against what you've already done, the
21 supplement, unless that's easier. Just one the category, job
22 title credit. And some of those names will have already been
23 on the 800 list, and there may be a few extra.

24 MS. BLOOM: Just for New York? The list that they
25 have right now is for the FEG companies all over the place.

1 Are we now talking just New York?

2 THE COURT: No. Keep it consistent with what you did
3 the first time, and without regard to whether this is the least
4 bit useful to anybody, it just seems it's simpler to do it than
5 to play with it. Unless you all think that it's not too hard
6 for you to run it limited to New York and that that's more
7 relevant.

8 MS. BLOOM: My only question -- I guess my question is
9 more on the time frame now that Judge Pauley has clarified that
10 the FLSA claim doesn't go back, doesn't relate back, then, I
11 guess, for outside of New York, the time frame would be
12 limited. I don't know if that makes a difference or not.
13 Mr. Bunin will have to answer that.

14 MR. BUNIN: In terms of the -- just to clarify the
15 complexity, the differences of time we're talking about here,
16 you're talking about one set of differences for New York and
17 the other.

18 MS. BLOOM: Right.

19 MR. BUNIN: That would take a little more programming,
20 but it is certainly doable. I can certainly speak to the
21 SoftPeople crew about running such a query. Just so that I'm
22 clear now, are we talking about re-running that with this time
23 limitation that I just -- to be determined, since I only know
24 the current time limitation, as well as using an "or" between
25 the K group and --

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1 THE COURT: No, no, no.

2 MR. BUNIN: No, not using "or."

3 THE COURT: Job title credit without regard to K
4 group.

5 MR. BUNIN: Oh, without regard. That certainly can be
6 done.

7 THE COURT: All right. I guess we'll get to the time
8 period in IV.

9 MS. WAGONER: Your Honor, just one last, can we just
10 clarify that we are entitled to an Excel version of the
11 spreadsheet?

12 MS. BLOOM: I will provide an Excel version.

13 MS. WAGONER: Thank you.

14 THE COURT: OK. IV, the time period?

15 MS. BLOOM: It would seem that if Judge Pauley did
16 rule on the FLSA piece, that that hopefully should help solve
17 the problem, because it was our position that, with regard to
18 anything that was produced that was not applicable to New York,
19 that the operative time frame would be documents which were in
20 effect from September of 2009 forward. And just to be clear,
21 if it's a document that was drafted in 2000 but it's still in
22 effect and applicable in 2009, September of 2009 forward,
23 then -- I'm sorry, October of 2009 forward -- then clearly it
24 would be produced. But if it's a document that was not in
25 effect from October 19, 2009 forward, then it has no

1 applicability to the FLSA claim and we would object on the
2 basis that why are we using this precious time to do discovery
3 for time-barred claims.

4 MS. WAGONER: Your Honor, with that clarification I
5 don't think that we have a problem with that. I'm not sure if
6 October 2009 is what Judge Pauley ordered or not, but I think
7 it's right that as long as policy documents are being searched
8 for that may go back prior to that date, then we have no
9 dispute about that.

10 THE COURT: Good. And as to the going-forward date,
11 which may be under this bullet or not, there's got to be a
12 cutoff.

13 MS. BLOOM: I was going to suggest, we started paying
14 interns at a certain point in time, in 2010, and it's our
15 position that once -- this case is about unpaid interns, what
16 they were doing while they were unpaid, whether they were
17 misclassified during that time period, so it's our position
18 that anything that wasn't applicable to unpaid interns wouldn't
19 be relevant in this case.

20 MS. WAGONER: Your Honor, our position is that the
21 classification division of interns as employees and whether or
22 not they should be paid is at the heart of this case and policy
23 documents that talk about why Fox decided to preclassify
24 interns as being --

25 THE COURT: If the only issue is policy documents,

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1 then by going somewhat longer than the changeover, you'll get
2 the reasoning behind the changeover, but -- and I forget which
3 bullet point it is in this, there's some argument about whether
4 it goes to November 1, 2012 or even goes beyond that or cuts
5 off earlier. I guess it depends on what document requests
6 you're dealing with. So are we both in agreement that you cut
7 it off within -- when did you say the decision to pay was made?

8 MS. BLOOM: It was made sometime in 2010, I think the
9 fall of 2010.

10 THE COURT: All right. So why don't you run through
11 December 31, 2010.

12 MS. WAGONER: That's fine with us.

13 MS. BLOOM: Again we're talking about with the Amy
14 Hoffman overlay on that.

15 THE COURT: Yes, with the Amy Hoffman overlay on
16 everything.

17 MS. BLOOM: OK.

18 THE COURT: OK. So I think we're now at V.

19 MS. BLOOM: I would think that, other than the
20 question about whether interns were to be paid going forward,
21 that your rulings up to this point have clarified and should
22 have resolved all of the issues with those. But we still would
23 like to discuss whether or not information about why interns
24 became paid is relevant to whether or not the interns that were
25 unpaid were properly classified.

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1 THE COURT: All right. It's relevant because if
2 there's a smoking gun that's not a lawyer document that's not
3 privileged that says now that we realize we've violated the law
4 for the last ten years in not paying them we're going to start
5 paying them, you know, that sort of goes under the thought
6 principle. Other than what, I'm not sure what else would be
7 relevant in terms of the changeover of the policy. If you all
8 want to tell me what particular interrogatory or document
9 requests we're now fighting over -- because mostly we've been
10 working off of the letter, but I know I do have the
11 interrogatories and responses here, both of them here.

12 MS. WAGONER: Your Honor, I'm looking at bullet point
13 2 of the letter of interrogatory no. 8, might be a place to
14 start.

15 MS. BLOOM: And document request 15.

16 THE COURT: All right. Let's limit it to who at FEG
17 was involved in this decision. That's the named defendant,
18 FEG, Inc. Whether it's all individuals and whether you want to
19 convert this to a 30(b)(6) type issue, I leave it up to all of
20 you. "All" could be, you know, everybody including the
21 accounting department who let it create new PeopleSoft codes or
22 whatever. I'm sure we're talking about the policy decision,
23 how many people were involved in that.

24 MS. BLOOM: For the Amy Hoffman employees.

25 THE COURT: Well, on this, somebody at -- look, the

1 issue on Amy Hoffman was, you don't know where to go with the
2 other 500 subsidiaries. On this one, if there is such a thing
3 as FEG personnel besides Ms. Hoffman, who made a decision to
4 start paying interns, that's what we're looking for.

5 MS. BLOOM: OK.

6 THE COURT: OK? So that's the Court's ruling on
7 interrogatory no. 8.

8 MS. WAGONER: And your Honor, just to clarify the
9 point about the Amy Hoffman subsidiaries, depending on who the
10 individuals identified are, if we depose that person, if this
11 ruling about Amy Hoffman doesn't mean that we can't have that
12 person --

13 THE COURT: Anyone being deposed, you can ask them
14 almost anything you want. If they don't know the answer they
15 don't know the answer. If they do know the answer that's fine.
16 I'm assuming the answer is going to be either, we made a
17 corporate policy to start paying interns at any and every
18 subsidiary, prior to that individual subsidiaries made their
19 own decisions -- that's one possible answer, and if I had to
20 guess the most likely one. Or it could be, you know, we made
21 this decision only as to FEG subsidiary 1, 2, and 3 and don't
22 have a clue as to what other people did or any other variation
23 on all of this. We'll see. But you're running out of time
24 prior to December 14. So let's just get this done.

25 What else from this area do you need me to rule on?

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1 MS. WAGONER: Interrogatory no. 9 is similar to
2 interrogatory no. 8, but just to clarify that the Court's
3 ruling is the same as to no. 9.

4 MS. BLOOM: I think 9 is covered by your ruling on the
5 Hoffman issue.

6 THE COURT: Again, since this is just "identify a
7 person" --

8 MS. BLOOM: Oh, I'm sorry.

9 THE COURT: -- if there was somebody else besides Amy
10 Hoffman who previously decided for the corporate interns,
11 whatever that really means, that they would not be paid, not
12 just that they would carry on the policy that somebody else
13 made and be involved in the hiring of these people. If someone
14 made a decision, a determination that employees were not going
15 to be paid and who are part of the, quote/unquote, FEG, Inc.
16 group, that's to be answered for no. 9.

17 MS. BLOOM: OK. Thank you.

18 THE COURT: Do we need to look at 10 and 11 or is this
19 all the same?

20 MS. BLOOM: Well, 10, we're just going to give them
21 our workers' compensation policy and if they want to -- in
22 their 30(b)(6) they want someone to talk about the workers'
23 comp policy, I'm prepared to produce somebody. I think it's a
24 legal issue, in terms of what the workers' comp laws say. I'm
25 not sure it has any particular applicability here, but if

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1 that's what they want I'm prepared to do that.

2 THE COURT: OK, good.

3 MS. WAGONER: Your Honor, I would just ask that to the
4 extent there's a different individual who decided that interns
5 should be classified as employees for workers' comp purposes
6 and not for purposes of wages --

7 MS. BLOOM: There's no person like that. We have a
8 person that does our workers' comp policy. There are all kinds
9 of reasons why people are or are not covered under the policy,
10 and that's the person that I'm prepared to produce.

11 THE COURT: All right, good.

12 MS. WAGONER: OK.

13 THE COURT: I have no idea what the seventh
14 determinative defense is.

15 MS. BLOOM: That's the good-faith one, and I think we
16 now have all agreed that damages are being taken care of later.

17 THE COURT: All right. So now we go to VI.

18 MS. BLOOM: I think you've taken care of that as well.

19 MS. WAGONER: I don't think so, your Honor, because we
20 had only asked for documents related to the Hoffman Corporation
21 here, which defendants no longer agree to provide, policy
22 documents about what interns do.

23 MS. BLOOM: I understand what the issue is. In order
24 to produce every potentially responsive document to this
25 request, what we would need to do is go not just to every

1 supervisor, like on the -- if you look at the PeopleSoft list
2 and you pull out the Amy Hoffman interns, and then you go to
3 the supervisors that are listed on that list, in order get
4 every responsive document. You don't just go to that
5 supervisor. Then you have to ask that supervisor, who were the
6 people underneath you who had responsibility for supervising
7 interns in your office. And it took us a long time in terms of
8 just doing the Searchlight piece to get all that information
9 and get all those documents. So that was our -- we were going
10 to give her as much as we could, but going to that second-level
11 supervisor was burdensome. That was my objection.

12 MS. WAGONER: Your Honor, defendants haven't produced
13 anything at all in response to that. So to first state that
14 they would give us as much as they could seems disingenuous.

15 THE COURT: Let's cut this back. Are there any
16 corporate-level manuals, guidelines, forms, or memoranda, as
17 opposed to what a particular person who used an Amy Hoffman
18 intern may have done or subbed out to someone even more junior
19 to them to do with the intern?

20 MS. BLOOM: My understanding is that Ms. Hoffman's ESI
21 might have a few additional documents. I don't know precisely
22 what's already been given to them. And we're producing that.

23 THE COURT: Hard copy. Besides ESI, does Ms. Hoffman
24 or anyone --

25 MS. BLOOM: We're looking and to the extent we have

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1 them we will provide them.

2 THE COURT: OK. That's the Court's ruling.

3 MS. WAGONER: Your Honor, could I just add something
4 on this?

5 THE COURT: Yes.

6 MS. WAGONER: During the Searchlight discovery there
7 were only, I believe, two binders listing what interns' duties
8 are, and those documents, from what we understood from
9 defendants at the time, were not hard to find because all it
10 involved is shooting e-mails to the office and saying, all
11 right, could you please give us the orientation documents that
12 you give to interns when they start their internship so they
13 know what they're supposed to do every day. I don't think it's
14 very burdensome at all to make that request of a limited number
15 of nine subsidiaries.

16 THE COURT: Nine subsidiaries, eight managers, ten
17 submanagers. That list starts becoming hundreds of people.
18 And then the question is, are you just asking them to send the
19 e-mail, no follow-up, whatever comes back from that is fine,
20 or, à la a litigation hold, are you going to say you now have
21 to go talk to each one of those in my hypothetical 720 people?
22 And if by the time you get to person no. 720 they have got an
23 intern manual for the people who worked in the advertising
24 department of Fox Sport Network New York or something and did
25 not apply to any other intern other than their two interns, how

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1 does that help you with the class action in any way?

2 MS. WAGONER: I think that would -- first of all I
3 think there are not going to be that many people. And even
4 looking at the PeopleSoft list, I don't think it's so
5 extensive, you know, who the group of supervisors are. And I
6 think it would be helpful to class certification because this
7 is sort the cleanest way, in one document, to see, here are the
8 tasks that interns do.

9 THE COURT: It won't be one document. It will be
10 numerous. That's why I'm saying if there is a central policy
11 document, you can get that, that's a class. Once you're
12 getting below that, maybe you have eight subclasses or nine
13 subclasses for each of the companies Ms. Hoffman dealt with,
14 and if we can go to that level only -- I assume Ms. Hoffman
15 knows who her contact was at each of those companies.

16 MS. BLOOM: Yes.

17 THE COURT: So at that level.

18 MS. BLOOM: Sure.

19 THE COURT: Ms. Hoffman and the people she dealt with
20 immediately, any manuals and the like, get that in hard copy
21 and move on.

22 MS. BLOOM: Great.

23 THE COURT: OK. The good-faith affirmative defense,
24 which is VII, we are deferring to damage discovery. VIII, the
25 location of depositions, which only seems to be an issue as to

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1 Ms. Gratts --

2 MS. BLOOM: Could I talk about that for a minute,
3 please?

4 THE COURT: Yes.

5 MS. BLOOM: As of today, I have not one piece of paper
6 from Ms. Gratts, and I have made it known a long time ago that
7 I wanted to take her deposition and I wanted to get her
8 discovery first, but then I wanted to take her deposition, and
9 that I thought it should be in New York, because she is the
10 only class representative for this California class. She
11 elected to be part of this lawsuit. She certainly could have
12 sued in California.

13 THE COURT: Let's stop one minute. I assume you've
14 issued interrogatories and/or document requests.

15 MS. BLOOM: Yes. Supposedly by sometime at the end of
16 the day today I will have documents from her.

17 THE COURT: That is correct?

18 MS. WAGONER: That's right, your Honor. She has very,
19 very few documents, but we are producing them all the.

20 THE COURT: If there were interrogatories, they are
21 being answered?

22 MS. WAGONER: They have already been answered, your
23 Honor.

24 THE COURT: All right. So now we just come to the
25 decision of where to do it. And I guess the question is purely

1 one of timing. If there is a way to work it out while you're
2 all in Los Angeles, I would prefer that to happen. If that is
3 going to leave defense counsel with either no time to do it or
4 dead days because if we do it after the depositions of the Fox
5 people I assume you're going to say you want a day in between
6 to prep Ms. Gratts, which isn't fair to them, and if we do it
7 before, unless you don't care about the gap, we're taking away
8 time that they're going to be prepping their witnesses for your
9 deposition.

10 MS. BLOOM: And I'd like to do her deposition -- I had
11 suggested -- we had suggested back in October, December the
12 4th. I understand she has a job. If Tuesday don't work I'm
13 happy to do it on Monday the 3rd. But I'd like to have some
14 time after that because there may be stuff that comes out of
15 her deposition that means there's some discovery that we want
16 to do. I mean, she is a named plaintiff, and in terms of the
17 beginning of next week, neither Ms. Melican nor I can be in Los
18 Angeles then.

19 MS. WAGONER: Your Honor, I think as far as additional
20 discovery, it seems hard to imagine what that would be because
21 we've produced everything that had any relationship to that
22 job, we are going to produce. And I think that we can work out
23 a schedule. I think that -- I guess I don't understand why we
24 can't just find dates that we're all available in Los Angeles.

25 THE COURT: Because apparently you can't.

1 MS. BLOOM: We didn't come up with the two months.
2 The deposi -- we can't. The answer is, we can't find dates
3 within the same week. And if Ms. Gratts' deposition takes
4 place in Los Angeles, it will necessitate two trips. Plus, I
5 want to take her deposition sooner rather than later because
6 that's my only -- she is a named plaintiff.

7 THE COURT: When are the LA depositions scheduled for?

8 MS. BLOOM: Right now -- and again this might change
9 because it depends on who the 30(b)(6) is, but we were looking
10 at the 13th or the 14th of December.

11 THE COURT: All right. Bring her to New York for the
12 week after the week after Thanksgiving, that is, the week of
13 December 3 early in the week. If a weekend makes a difference
14 in terms of her missing or not missing work, would you be
15 amenable to doing it on Saturday or Sunday?

16 MS. BLOOM: Yes.

17 MS. WAGONER: Your Honor, I can give you the 3rd or
18 4th. Those dates will be difficult for her at this point
19 because she's got to request time off work.

20 THE COURT: No. I have to stop. So you're now
21 forcing me to do the it will take place no later than December
22 4th? If you want to do it the weekend of December 12, that's
23 fine. If you want to do next week, that's fine too. Don't
24 give me she has to give work notice or something like this.

25 Any other issues? From the letter. I assume that

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1 finishes the letter. So the next question is, any issues that,
2 despite the length of the letter, were not in the letter that
3 you need me to rule on?

4 MS. BLOOM: On the 30(b)(6), your Honor, it sounds
5 like we're going to be producing maybe three people: someone
6 for the workers' comp, somebody on the corporate entity, and
7 then somebody on the Amy Hoffman piece. Can we agree to one
8 day of seven hours for all three of those people, as opposed to
9 three days of seven hours?

10 THE COURT: No, because 30(b)(6) depositions, each
11 count as seven hours each. Obviously none of you want to waste
12 time, because time is tight. So you all figure out your
13 scheduling. If you can assume that two can get done in one
14 day, I can't imagine frankly that the workers' comp person will
15 take very long. But I'm not setting any arbitrary time limit
16 on it at the moment, other than I expect everyone to act in
17 good faith and to coordinate scheduling in such a way that
18 makes sense. And if that means starting the workers' comp
19 person at 9:30 and having the second witness available to start
20 at 2 and if the workers' comp for some unforeseen reason goes
21 past 2 just pushing off the other person, that's fine too.

22 MS. BLOOM: Yes. If we can pick a location for the
23 deposition -- I think it was downtown -- if you wanted to do it
24 in the Proskauer LA office that's across the street from Fox,
25 that would make it easier.

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1 MS. WAGONER: We can work it out outside of here.
2 We'll certainly work to make it convenient for the witnesses to
3 get there as quickly as they need to.

4 THE COURT: Knowing Los Angeles traffic nowadays --

5 MS. WAGONER: Right.

6 THE COURT: -- if we're trying to do multiple in a
7 day and they're on call, OK, we've finished the deposition,
8 come over, if that's not nearby to where they're working, that
9 may take the rest of the day for them to get there.

10 All right. Do we need another status conference date,
11 or, since you know what you have to do and you have a lot of
12 work to do and very little time, should I leave you on the
13 honor system, meaning you'll write and/or call if there are any
14 problems?

15 MS. BLOOM: I think that would be satisfactory to us.

16 MS. WAGONER: I agree, your Honor.

17 THE COURT: All right. And I guess finally I should
18 make sure not to forget to ask, are you talking settlement? Is
19 there anything the Court can do to help? Or because of the
20 class action ramifications or whatever that it's unseizable?

21 MS. WAGONER: Your Honor, we have reached out to
22 defendants and we're open to having this discussion.

23 THE COURT: Have you reached out with a number
24 attached or just said, hi, we're willing to talk if you are?

25 MS. WAGONER: We were told that that wouldn't be

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1 helpful.

2 MS. BLOOM: Yes, I --

3 THE COURT: OK.

4 MS. BLOOM: In the current posture of the case, I
5 don't think that settlement discussions would be productive.
6 Sorry.

7 THE COURT: "Current posture" meaning that we're not
8 just talking about these named plaintiffs but the possibility
9 of others --

10 MS. BLOOM: Correct.

11 THE COURT: -- or something else?

12 MS. BLOOM: Right, exactly. Until the class issue is
13 resolved, I think it would be difficult.

14 THE COURT: All right. And do plaintiffs have any
15 interest in settling individually and letting someone else
16 worry about the class or collective action since nothing has
17 been moved for certification at this point?

18 MS. WAGONER: Your Honor, we don't -- we think it's
19 very important to these clients.

20 THE COURT: Or the law firm.

21 MS. WAGONER: We can't divulge their names. It's very
22 important to them too.

23 THE COURT: Very good, then. I have tried.

24 MS. BLOOM: Thank you.

25 THE COURT: All right. Happy Thanksgiving, all.